

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
ERNESTO and DIANA MIRANDA,

Plaintiffs,

-against-

ABEX CORPORATION, et al.,

Defendants.  
\_\_\_\_\_

x

**AMENDED ANSWER TO  
STANDARD COMPLAINT NO. 1**

Civil Action No.: 08 CV 5491 (SAS)

x

Defendant, INTERNATIONAL BUSINESS MACHINES CORPORATION ("IBM"), by its attorneys, AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP, as and for its amended answer to Standard Complaint No. 1, alleges as follows, upon information and belief:

**PARTIES PLAINTIFF**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Standard Complaint as to the plaintiff's employment and alleged diseases and injuries, denies the allegations as to IBM, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Standard Complaint.

**PARTIES DEFENDANT**

3. Denies the allegations contained in paragraphs 3 and 6 of the Standard Complaint as to IBM and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Standard Complaint.

5. Denies the allegations contained in paragraph 5 of the Standard Complaint that IBM committed any tortious acts within the State and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

### **BACKGROUND**

6. Denies the allegations contained in paragraph 7 of the Standard Complaint as to IBM and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8 and 9 of the Standard Complaint in the form alleged and refers all questions of law to the Honorable Court.

8. Denies the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of the Standard Complaint as to IBM and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

9. Denies the allegations contained in paragraph 22 of the Standard Complaint.

### **AS TO THE FIRST CLAIM**

10. In response to paragraph 23 of the Standard Complaint, defendant repeats and reiterates each admission or denial made herein as though more fully set forth at length herein.

11. Denies the allegations contained in paragraphs 24, 25, 26, 27, 28, 29, and 30 of the Standard Complaint as to IBM and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

12. Denies the allegations contained in paragraphs 31 and 32 of the Standard

Complaint.

**AS TO THE SECOND CLAIM**

13. In response to paragraph 33 of the Standard Complaint, defendant repeats and reiterates each admission or denial made herein as though more fully set forth at length herein.

14. Denies the allegations contained in paragraphs 34 and 36 of the Standard Complaint.

15. Denies the allegations contained in paragraph 35 of the Standard Complaint and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

**AS TO THE THIRD CLAIM**

16. In response to paragraph 37 of the Standard Complaint, defendant repeats and reiterates each admission or denial made herein as though more fully set forth at length herein.

17. Denies the allegations contained in paragraphs 38 and 39 of the Standard Complaint.

**AS TO THE FOURTH CLAIM**

18. In response to paragraph 40 of the Standard Complaint, defendant repeats and reiterates each admission or denial made herein as though more fully set forth at length herein.

19. Denies the allegations contained in paragraphs 41 and 42 of the Standard Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

20. This Court lacks personal jurisdiction over IBM.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

21. All claims and causes of action asserted by the plaintiff are barred by the expiration of the applicable statutes of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

22. If the plaintiff sustained the injuries and damages as alleged, the same were caused, in whole or in part, by the conduct of one or more persons or entities over whom IBM exercised no control and with whom IBM had no legal relationship.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

23. The Standard Complaint fails to state cognizable claims against IBM.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

24. To the extent that the plaintiff alleges claims accruing before September 1, 1975, each such claim is completely barred by the plaintiff's contributory negligence and/or assumption of the risk.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

25. If the plaintiff sustained the injuries and damages as alleged, the same were caused, in whole or in part, by the culpable conduct and/or assumption of the risk by the plaintiff.

Therefore, the plaintiff's claims are barred or diminished in the proportion that such culpable conduct and/or assumption of the risk bears to the culpable conduct which the plaintiff claims caused the injuries and/or damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

26. Pursuant to the law of New York, the liability, if any, of IBM for non-economic loss is not joint and several but shall be limited to the proportionate share, if any, attributed to IBM.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

27. If the plaintiff sustained the injuries and damages as alleged, such injuries and damages are the result of an idiosyncratic reaction, rather than the result of any negligence or breach of duty attributable in any manner to IBM.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

28. The plaintiff may have had a significant premonitory medical history which was the causative factor of the alleged injuries.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

29. To the extent that the plaintiff is able to prove the allegations with respect to negligence, injuries, and damages, all of which IBM denies, any such injuries and/or damages to

the plaintiff were the result of intervening and/or interceding acts of superseding negligence on the part of persons over whom IBM had no control or right of control.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

30. The plaintiff contributed to the injuries alleged by the use, either in whole or in part, of other substances, products, medications, and drugs.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

31. If the plaintiff sustained the injuries and damages as alleged, such injuries and damages are the result of an operation of nature, rather than the result of want of care or breach of duty by IBM.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

32. Any verdict or judgment against any defendant, including IBM, is entitled to reduction pursuant to General Obligations Law § 15-108, on the basis of prior settlements and/or compromises.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE,  
DEFENDANT INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

33. All causes of action asserted in the Standard Complaint fail to state a claim upon which an award of punitive damages may be made.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND AS AND  
FOR A CROSS-CLAIM AGAINST ALL DEFENDANTS,**

**INTERNATIONAL BUSINESS MACHINES  
CORPORATION ALLEGES AS FOLLOWS, UPON  
INFORMATION AND BELIEF:**

34. If the plaintiff was caused to sustain any injuries or damages, through any act or omission, other than those of the plaintiff, said injuries or damages arose, in whole or in part, from the acts or omissions of other defendants. If any judgment is recovered herein by the plaintiff against IBM, this answering defendant shall be entitled to indemnity or contribution on the basis of the proportionate responsibility of each such party.

WHEREFORE, defendant, International Business Machines Corporation, demands judgment dismissing Standard Complaint No. 1 as to defendant, International Business Machines Corporation, and further demands that the ultimate rights of the answering defendant and the co-defendants, as among themselves, be determined in this action, and that the answering defendant have judgment over and against the co-defendants for all or a part of any verdict or judgment which may be obtained herein by the plaintiff against the answering defendant, together with the costs and disbursements of this action.

Dated: New York, New York  
August 15, 2008

Yours, etc.,

AARONSON RAPPAPORT FEINSTEIN &  
DEUTSCH, LLP

By: Elizabeth M. Young  
Elizabeth M. Young (EMY 3683)

Attorneys for Defendant

INTERNATIONAL BUSINESS MACHINES  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CV 5491 (SAS)

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ERNESTO and DIANA MIRANDA,

Plaintiff,

-against-

ABEX CORPORATION, et al.

Defendants.

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**AMENDED ANSWER TO STANDARD COMPLAINT NO. 1**

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**AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP**

Defendants

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

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To: **ALL PARTIES**

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